

**International Fidelity Insurance Company  
One Newark Center  
Newark, New Jersey 07102**

**NAIC COMPANY 11592**

**MARKET CONDUCT EXAMINATION REPORT**

**As of  
December 31, 2001**

**PREPARED BY INDEPENDENT CONTRACTORS  
IN COORDINATION WITH  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

John J. Postolowski, CIE, MA, FLMI, AIRC, ACS  
Chief Examiner, Market Conduct Section

Herbert L. Davis, AIE  
Frederick T. Verny Jr., AIE, FLMI  
Gerald L. Linhart  
Independent Market Conduct Examiners  
Working in Coordination with the  
Colorado Division of Insurance  
1560 Broadway, Suite 850  
Denver, Colorado 80202  
(303) 894-7499

**International Fidelity Insurance Company  
One Newark Center  
Newark, New Jersey 07102**

**MARKET CONDUCT  
EXAMINATION REPORT  
As of  
December 31, 2001**

**Prepared by**

**John J. Postolowski, CIE, MA, FLMI, AIRC, ACS  
Chief Examiner, Market Conduct Section**

**Herbert L. Davis, AIE  
Frederick T. Verny Jr., AIE, FLMI  
Gerald L. Linhart  
Independent Contract Examiners**

January 31, 2003

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., a targeted examination of the International Fidelity Insurance Company's Bail Bond business has been conducted. The Company's records were examined at the home office located at One Newark Center, Newark, New Jersey, 07102. The examination covered the calendar year of January 1, 2001, to December 31, 2001.

A report of the examination of the International Fidelity Insurance Company is, herewith, respectfully submitted.

John J. Postolowski, CIE, MA, FLMI, AIRC, ACS  
Chief Examiner, Market Conduct Section

Herbert L. Davis, AIE  
Frederick T. Verny Jr., AIE, FLMI  
Gerald L. Linhart

Independent Market Conduct Examiners

**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
INTERNATIONAL FIDELITY INSURANCE COMPANY**

**TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
I. COMPANY PROFILE.....	6
II. PURPOSE AND SCOPE OF EXAMINATION.....	7
III. EXAMINATION REPORT SUMMARY.....	9
IV. PERTINENT FACTUAL FINDINGS.....	11
A. BAIL BONDS	
1. Company Operations and Management.....	12
2. Producers/Agents.....	21
V. SUMMARY OF RECOMMENDATIONS.....	36
VI. EXAMINATION REPORT SUBMISSION.....	37

## **COMPANY HISTORY AND PROFILE**

International Fidelity Insurance Company (the “Company”) is a holding company and was incorporated December 27, 1904 under the laws of the state of New Jersey and began business January 5, 1905. The Monmouth Insurance Company of Newark, New Jersey was merged with the Company in August 1963, and in the early part of 1964 the Company began writing surety business. The Company was licensed and began operation in Colorado on March 1, 1977.

As of March 1, 1993, the Company’s paid-in capital was changed to \$1.5 million consisting of 1 million shares of common stock at a par value of \$1.50 per share.\* All authorized shares are outstanding.

The affairs of the company are directed by Francis L. Mitterhoff, president, who has been associated with the company since 1964.

The Company’s chief officers at this writing are: Francis L. Mitterhoff, president, Matthew W. Klimczak, senior vice president and Chief Operating Officer, Jerry W. Watson, senior vice president Bail Operations, Lee T. Hartmann, vice president and chief financial officer, and Bogda Clark, vice president, Claims.

The Company provides a wide range of surety bonds including contract and performance bonds, license and permit bonds, miscellaneous type bonds, and bail bonds. Bail bonds represent the Company’s second largest class of surety. The Company’s home office is located in Newark, New Jersey. The Company’s bail bond unit is located in the Newark office.

The Company has four (4) direct contracted independent licensed bail bond general agents and approximately thirty-eight (38) subagents located within various territories of operation.

The Company is licensed to write bail bonds in the District of Columbia, Puerto Rico and all states with the exception of the four (4) states where there is no commercial bail. These are Oregon, Wisconsin, Illinois, and Kentucky.

An examination of the financial condition of the Company was made as of December 31, 1997 by the Insurance Department of New Jersey. An annual independent audit of the company is conducted by Ernest & Young, LLP.

In 2001, the Company reported 5,303\* bail bonds in force in Colorado. Based on figures reported to the Colorado Division of Insurance, the Company had \$2,664,358.50\* in bail bond gross written premium, which represents a 12% of market share of all bail bonds written in Colorado during 2001.\*\*

\*Data as reported by the Company

\*\*Data as reported in the Colorado Insurance Industry Statistical report

## **PURPOSE AND SCOPE OF EXAMINATION**

This targeted market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the targeted examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles relating to bail bond insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report, the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2001 through December 31, 2001.

File sampling was based on a review of underwriting files randomly selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings. The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which contained no errors, was omitted.

An error tolerance level of plus or minus (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systematic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Bail Bond issues and contains information regarding exceptions to the Colorado Insurance law.

The examination included a review of the following seven (7) Company operations:

1. Company Operations and Management
2. Marketing and Sales
3. Complaint Handling
4. Producers/Agents
5. Underwriting: Applications, Forms and Rates
6. Policyholder Services
7. Claim Handling, including forfeiture judgments and return of collateral

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner.

Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.



## **EXAMINATION REPORT SUMMARY**

The Company reported 5,303 bail bonds in force during the calendar year of 2001 from which 100 were systematically selected to be reviewed for compliance with Colorado insurance law. The Company has four (4) direct contracted independent licensed bail bond general agents and approximately thirty-eight (38) subagents located within various territories of operation. The report reflects records examined from five (5) subagents. Two (2) agents failed to provide six (6) files for examination, which resulted in a total examination of ninety-four (94) files being available for review from the sample of one hundred (100) files representing 2% of all bail bonds written by the Company in Colorado during 2001.

The examination resulted in twelve (12) compliance issues due to the failure of the Company and its producers' to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. The following is a summary of the examiners' findings by category:

### **Company Operations and Management:**

In the area of company operations and management, two (2) compliance issues are addressed in this report. These issues are due to the Company's failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issues in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable Colorado Statutes and Regulations as to each issue. The issues in this category are identified as follows:

- Failure to adequately monitor agents' activities in the areas of noncompliance as noted in the issues noted under the producers' section herein.
- Failure to accurately report premium to the Division of Insurance and pay appropriate taxes due.

### **Marketing and Sales:**

In the area of marketing and sales, no compliance issues are addressed in the report.

### **Complaint Handling:**

In the area of complaint handling, no compliance issues are addressed in the report.

### **Producers/Agents:**

In the area of producers/agents, ten (10) compliance issues are addressed in this report. These issues are due to company agents' failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issues in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable

Colorado Statutes and Regulations as to each issue. The issues in this category are identified as follows:

- Failure to comply with agent reporting requirements to the Division of Insurance.
- Failure of agents to provide clients payment schedules and/or payment receipts.
- Failure of agents to report proper premium to the Company.
- Failure of agent and principal to sign the bonding agreement as required.
- Failure of agents to provide a list of collateral to the Company.
- Failure of agent to provide property owner full release of lien.
- Failure of agent to provide property owner with a written disclosure of lien against real property.
- Failure to display the required fraud statement on all bail bond applications.
- Failure to register assumed (trade) name with the Colorado Division of Insurance.
- Failure of agents to maintain and provide records to examiner.

**Underwriting:**

In the area of underwriting, no compliance issues are addressed in the report.

**Policyholder Services:**

In the area of policyholder services, no compliance issues are addressed in the report.

**Claim Handling:**

In the area of claim handling, no compliance issues are addressed in the report.

**INTERNATIONAL FIDELITY INSURANCE COMPANY**

**FACTUAL FINDINGS**

**BAIL BONDS**

**MARKET CONDUCT EXAMINATION**

**FACTUAL FINDINGS**

**COMPANY OPERATIONS AND MANAGEMENT**

**Issue A: Failure to adequately monitor producers' activities.**

Section 10-1-127, C.R.S. – Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, requires, in part:

(6)(a) On and after January 1, 1997, every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (6) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems:

International Fidelity Ins. Co. has procedures established to audit and monitor its producers activities, but has failed to provide adequate monitoring which appears to be a violation of the following statutes.

Two (2) agents failed to provide six (6) files for examination, which resulted in a total examination of ninety-four (94) files being available for review from the sample of one hundred (100) files.

**1. Section 12-7-105, C.R.S. – Reports and records required – bonding agents requires in part:**

(1) Commencing November 1, 2000, each licensed agent shall provide a report to the division no later than November 1 of each year.

(f) Such further information as the division may **reasonably require** (emphasis added).

Colorado Division of Insurance Bulletin No.14-00 titled, "Annual reporting requirements for bail bonding agents," covers in detail the requirements for annual reporting in conjunction with C.R.S. 12-7-105.

Regulation 1-1-7 - Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states in part:

**III. RULE**

**B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the

insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

One (1) agent failed to submit his annual report and one (1) agent submitted his annual report after the required due date. The company failed to assure compliance with aforementioned statute. This appears to be a violation of Colorado insurance law.

**2. Section 12-7-108, C.R.S. – Bonding agreement – requirements – payment schedule, states:**

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing and shall set forth the schedule of such payments.

In fourteen (14) of the bond files examined, no payment schedules and/or payment receipts were issued to clients. The Company failed to ensure issuance of required payment schedules and/or payment receipts. This appears to be a violation of Colorado insurance law.

**3. Section 10-3-209, C.R.S.- Tax on premium collected – exemptions – penalties, states, in part:**

(1)(a) All insurance companies writing business in this state, including, without limitation, those defined in section 10-1-102(4), shall pay to the division of insurance a tax on the gross amount of all premiums collected or contracted....

Regulation 1-2-1, Concerning Agent Fiduciary Responsibility, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

**III. RULE**

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

2. the insurance producer must keep an accurate record of all fiduciary funds, and

In sixteen (16) files the gross premium charged appears to have been incorrectly reported to the Company, therefore the Company may not have remitted the proper premium tax to the Division of Insurance. The Company should monitor its agents to ensure proper reporting of premium. This appears to be a violation of Colorado insurance law.

**4. Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states:**

(1) A bonding agreement shall be in writing and signed by the bail bonding agent and the principal. If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

In eighty-nine (89) files, the bail bonding agent's signature was not displayed on the bonding agreement. The Company failed to ensure that the bail bonding agents' signature is displayed on all bonding agreements. This appears to be a violation of Colorado insurance law.

5. Section 12-7-107, C.R.S., Notice to surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefore. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

Sixty-five (65) bail bond files reviewed indicated that collateral taken was unreported. The company failed to monitor and ensure that the collateral reports were submitted. This appears to be a violation of Colorado insurance law.

6. Section 16-4-104, C.R.S., Bail bond alternative, states

(3)(a)(IV) The bonding agent shall deliver to the property owner a fully executed and notarized reconveyance of title, a certificate of discharge, or a full release of any lien against real property that secures performance of the conditions of a bail bond within thirty days after receiving notice that the time for appealing an order that exonerated the bail bond has expired. The bonding agent shall also deliver to the property owner the original cancelled note as evidence that the indebtedness secured by any lien instrument has been paid or that the purposes of said instrument have been fully satisfied and the original deed of trust, security agreement, or other instrument which secured the bail bond obligation. If a timely notice of appeal is filed, the thirty-day period shall begin on the day the appellate court's affirmation of the order becomes final. If the bonding agent fails to comply with the requirements of this subparagraph (IV), the property owner may petition the district court to issue an order directing the clerk of such court to execute a **full reconveyance of title, a certificate of discharge, or a full release of any lien** (emphasis added) against real property created to secure performance of the conditions of the bail bond. The petition shall be verified and shall allege facts showing that the bonding agent has failed to comply with the provisions of this subparagraph (IV).

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

### III. RULE

#### B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

2. A policy record shall be maintained for each policy issued in the state. Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are

used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

c. Other information necessary for reconstruction of the rating and underwriting of the policy.

One (1) bail bond file examined contained or indicated a lien. It did not appear to have a fully executed reconveyance, a discharge, or a full release of lien. The file had a copy of a Deed of Trust with "Satisfied/released 6/13/01 which is still insufficient. The Company failed to monitor and ensure full release of lien. This is in possible violation of Colorado insurance law.

7. Section 16-4-104, C.R.S., Bail bond - alternatives, states, in part:

(3)(a)(I) If the bond is to be secured by real estate, the bail bonding agent shall provide the property owner with a written disclosure statement in the following form at the time an initial application is filed:

**"Disclosure of lien against real property**

**Do not sign this document until you read and understand it! This bail bond will be secured by real property you own or in which you have an interest. Failure to pay the bail bond premiums when due or the defendant's failure to comply with the conditions of bail could result in the loss of your property!"**

(II) The disclosure required in subparagraph (I) of this paragraph (a) shall be printed in fourteen-point bold-faced type either:

(B) In a clear and conspicuous statement on the face of the application.

One (1) bail bond file reviewed involved real property and had a signed and notarized blank Deed of Trust that did not contain a disclosure statement. The Company should ensure that agents provide the property owner with a written disclosure statement involving liens against real property. This appears to be a violation of Colorado insurance law.

8. Section 10-1-127, C.R.S., Fraudulent insurance acts-immunity for furnishing information relating to suspected insurance fraud-legislative declaration, states:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:



**"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

Forty-five (45) bail bond files examined lacked a fraud statement on the applications. The Company should ensure that applications used by its agent comply with Colorado insurance law. This appears to be a violation of Colorado insurance law.

**9. Section 10-2-701, C.R.S., - Assumed names-registration, states:**

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

In sixty-eight (68) bail bond files reviewed in three (3) agents offices, the (trade) names used had not been registered with the Division of Insurance. The Company failed to ensure that its agents had registered any (trade) name being used. This appears to be a violation of Colorado insurance law.

**10. Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:**

**III. RULE**

**B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES**

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are **readily available** (emphasis added) to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in the state. Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

In six (6) cases, the agents could not provide bail bond files to the examiner. The Company should ensure that all records are provided when requested by the examiner. This appears to be a violation of Colorado insurance law.

**Recommendation # 1:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-1-127, 10-2-701, 10-3-209, 12-7-105, 12-7-107, 12-7-108, 12-7-109, 16-4-103 and 16-4-104, C.R.S. and Regulations 1-1-7 and 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures related to the monitoring of all of its agents' activities to ensure compliance with Colorado insurance law.

**Issue B: Failure to accurately report premium and pay the appropriate taxes due.**

Section 10-3-209, C.R.S., Tax on premiums collected – exemptions – penalties, states, in part:

(1)(a) All insurance companies writing business in this state, including, without limitation, those defined in section [10-1-102](#) (4), shall pay to the division of insurance a tax on the gross amount of all premiums collected or contracted for on policies or contracts of insurance covering property or risks in this state during the previous calendar year, after deducting from such gross amount the amount received as reinsurance premiums on business in this state, and the amount refunded under credit life and credit accident and health insurance policies on account of termination of insurance prior to the maturity date of the indebtedness, and, in the case of companies other than life, the amounts paid to policyholders as return premiums, which shall include dividends or unabsorbed premiums or premium deposits returned or credited to policyholders.

(1)(e) The taxes provided for in this section shall be due and payable on the first day of March in each year. Any company failing or refusing to render such statement and information, or to pay taxes as specified in this section, for more than thirty days after the time specified, shall be liable to a penalty of up to one hundred dollars for each additional day of delinquency, to be assessed by the commissioner. If the tax paid is less than the full amount prescribed by this section, interest at the rate of one percent per month or fraction thereof on the unpaid amount shall be charged from the date on which payment was due to the date on which full payment is made, and a penalty of up to twenty-five percent of the unpaid amount may be assessed by the commissioner. The commissioner may suspend the certificate of authority of a delinquent company until such taxes and penalty, should any penalty be imposed, are fully paid.

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94*	16	17%

\*Two (2) agents failed to provide six (6) files for examination, which resulted in a total examination of ninety-four (94) files being available for review from the sample of one hundred (100) files.

The examination of ninety-four (94) systematically selected files from five (5) bail bonding agents showed sixteen (16) exceptions wherein the Company paid taxes on inaccurately reported gross premiums as reported from three (3) of the agents. There were eleven (11) over reported gross premiums totaling \$16,894.70, and five (5) under reported gross premiums totaling \$2,795.30. The net amount resulted in \$14,099.40 of over reported gross premiums for the sample size. As this affects the accuracy of premium taxes paid to the Division of Insurance, it is incumbent on the Company to ensure accuracy of premium reporting from its agents. This appears to be a violation of the requirements of Colorado insurance law.

**Recommendation # 2:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-3-209, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to accurate reporting of premium by its agents to ensure appropriate taxes paid to the Division of Insurance for compliance with the Colorado insurance law.

**FACTUAL FINDINGS**

**PRODUCERS / AGENTS**

**Issue C: Failure to comply with agent reporting requirements to the Division of Insurance.**

Section 12-7-105, C.R.S., Reports and records required – bonding agreements – division, states, in part:

- (1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division no later than November 1 of each year. Such report shall include but is not limited to the following information:
  - (a) The names of the persons for whom such bail bonding agent has become surety;
  - (b) A description of any bond activity;
  - (c) (Deleted by amendment, L. 96, . 1183, 8, effective June 1, 1996.)
  - (d) The amount of collateral or security received;
  - (e) (Deleted by amendment, L. 96, p. 1183, 8, effective June 1, 1996.)
  - (e.5) The names of persons for whom such bail bonding agent has become surety and who have failed to appear;
  - (f) Such further information as the division may reasonably require.

Colorado Division of Insurance Bulletin No.14-00 titled, “Annual reporting requirements for bail bonding agents,” covers in detail the requirements for annual reporting in support of C.R.S. 12-7-105.

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states:

III. RULE

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, record, documents and other business records so that the insurer’s/carrier’s or related entity’s claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

**Bail bonds in force for 2001**

Population	Sample Size	Examined	Number of Exceptions	Percentage to Sample
38	5	5	2	40%

The review of the five (5) bail bonding agents annual reports for 2001 revealed that one (1) agent failed to submit his 2001 annual report to the Colorado Division of Insurance, and one (1) agent failed to submit his report in a timely manner. According to the Division of Insurance records, the agent submitted his report November 4, 2002.

**Recommendation # 3:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-105, C.R.S. and Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to monitoring agent reporting requirements to ensure compliance with the Colorado insurance law.

**Issue D: Failure of agents to provide clients payment schedules and/or payment receipts.**

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states:

(3) An arrangement for the payment of all or part of the premium, commission, or fee paid to a bail bonding agent licensed under this article shall be in writing and shall set forth the schedule of such payments.

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94	14	15%

After reviewing ninety-four (94) bail bond files examined in five (5) offices of bail bonding agents, fourteen (14) files from three (3) agents' offices indicated failure of these agents to issue premium payment schedules and/or payment receipts to their clients. This appears to be a violation of Colorado insurance law.

**Recommendation # 4:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure that agents provide premium payment schedules and/or payment receipts to clients as required by Colorado insurance law.



**Issue E: Failure of agents to report proper premium to the Company.**

Section 10-2-704(1), C.R.S., Fiduciary responsibility, states, in part:

(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibility, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

### III. RULE

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

2. the insurance producer must keep an accurate record of all fiduciary funds, and

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94	16	17%

**Reporting statistics**

<b>OVER REPORTED</b>	<b>UNDER REPORTED</b>	<b>NET AMOUNT OVER</b>
<b>(11) \$16,894.70</b>	<b>(5) \$2,795.30</b>	<b>\$14,099.40</b>

In sixteen (16) of the ninety-four (94) bail bond files examined in five (5) offices of bail bonding agents, gross premiums charged by three (3) agents appear to have been incorrectly reported to the Company. There were eleven (11) over reported gross premiums totaling \$16,894.70, and five (5) under reported gross premiums totaling \$2,795.30. The net amount resulted in \$14,099.40 of over reported gross premiums for the sample size. This affects the accuracy of premium taxes paid to the Division of Insurance. This appears to be a violation of Colorado insurance law.

**Recommendation # 5:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-704, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to the accuracy of premium reporting by agents to ensure compliance with the Colorado insurance law.

**Issue F: Failure of agent and principal to sign the bonding agreement as required.**

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states

(1) A bonding agreement shall be in writing and signed by the bail bonding agent and the principal. If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94	89	95%

In eighty-nine (89) of the ninety-four (94) bail bond files examined in five (5) offices of bail bonding agents, the bonding agreements used by these agents failed to display the agent's signature, and in twenty-two (22) of the eighty-nine (89) files, the indemnity agreement lacked both the principal's signature along with the agent's signature. This places these agents in possible violation Colorado insurance law.

**Recommendation # 6:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure both the agent and principal sign the bonding agreements as required by Colorado insurance law.

**Issue G: Failure of agents to provide a list of collateral to the Company.**

Section 12-7-107, C.R.S., Notice to Surety, states:

(2) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94	65	70%

In sixty-five (65) bail bond files, which involved collateral, out of the ninety-four (94) bail bond files that were reviewed in the five (5) offices of bail bonding agents, three (3) agents failed to provide a list of the collateral to the Company within twenty days of the collateral being taken. This places these agents in possible violation of Colorado insurance law.

**Recommendation # 7:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-107, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures relating to collateral lists to surety to ensure compliance with Colorado insurance law.

**Issue H: Failure of agent to provide property owner full release of lien.**

Section 16-4-104, C.R.S., Bail bond - alternative, states

(3)(a)(IV) The bonding agent shall deliver to the property owner a fully executed and notarized reconveyance of title, a certificate of discharge, or a full release of any lien against real property that secures performance of the conditions of a bail bond within thirty days after receiving notice that the time for appealing an order that exonerated the bail bond has expired. The bonding agent shall also deliver to the property owner the original cancelled note as evidence that the indebtedness secured by any lien instrument has been paid or that the purposes of said instrument have been fully satisfied and the original deed of trust, security agreement, or other instrument which secured the bail bond obligation. If a timely notice of appeal is filed, the thirty-day period shall begin on the day the appellate court's affirmation of the order becomes final. If the bonding agent fails to comply with the requirements of this subparagraph (IV), the property owner may petition the district court to issue an order directing the clerk of such court to execute a **full reconveyance of title, a certificate of discharge, or a full release of any lien** (emphasis added) against real property created to secure performance of the conditions of the bail bond. The petition shall be verified and shall allege facts showing that the bonding agent has failed to comply with the provisions of this subparagraph (IV).

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

### III. RULE

#### B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

2. A policy record shall be maintained for each policy issued in the state. Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

c. Other information necessary for reconstruction of the rating and underwriting of the policy.

One (1) bail bond file of the ninety-four (94) files examined in five (5) offices of bail bonding agents contained or indicated a lien. There did not appear to be a “fully executed” reconveyance of title, a “certificate” of discharge, or a “full release” of lien documented by one (1) agent. This is a possible violation of Colorado insurance law.

**Recommendation # 8:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 16-4-104, C.R.S. and Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures relating to proper release of lien.

**Issue I: Failure of agent to provide property owner with a written disclosure of lien against real property .**

Section 16-4-104, C.R.S., Bail bond - alternatives, states:

(3)(a)(I) If the bond is to be secured by real estate, the bail bonding agent shall provide the property owner with a written disclosure statement in the following form at the time an initial application is filed:

**"Disclosure of lien against real property**

**Do not sign this document until you read and understand it! This bail bond will be secured by real property you own or in which you have an interest. Failure to pay the bail bond premiums when due or the defendant's failure to comply with the conditions of bail could result in the loss of your property!"**

(II) The disclosure required in subparagraph (I) of this paragraph (a) shall be printed in fourteen-point bold-faced type either:

(B) In a clear and conspicuous statement on the face of the application.

One (1) of the ninety-four (94) bail bond files examined in five (5) offices of bail bonding agents involved Deeds of Trust against real property. In one agent's office, the agent failed to provide the property owner with a written disclosure statement of lien against real property. This is a possible violation of Colorado insurance law.

**Recommendation # 9:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 16-4-104, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the agents issuing the required written disclosure of lien against real property to ensure compliance with the Colorado insurance law.

**Issue J: Failure to display the required fraud statement on all bail bond applications.**

Section 10-1-127, C.R.S., Fraudulent insurance acts-immunity for furnishing information relating to suspected insurance fraud-legislative declaration, states:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

**"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

**Bail bonds in force for 2001**

<b>Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
5,303	100	94	45	48%

In forty-five (45) of the ninety-four (94) bail bond files examined in five (5) offices of bail bonding agents, the applications used by three (3) agents failed to display the required fraud statement. This is a possible violation of Colorado insurance law.

**Recommendation # 10:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures regarding use of applications displaying the required fraud statement necessary to ensure compliance with Colorado insurance law.



**Issue K: Failure to register assumed (trade) name with the Colorado Division of Insurance.**

Section 10-2-701, C.R.S., - Assumed names-registration, states:

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

Amended Regulation 1-2-10, under the authority of Section 12-7-102(3), Concerning The Regulation Of Insurance Producers By The Colorado Division of Insurance: Colorado Producer Model Act, states, in part:

**Section 7 --- Producer Registration of Assumed (Trade) Name**

Each producer shall register with the Commissioner in writing the use of any assumed or fictitious name under which the producer conducts business prior to using the assumed name. The commissioner will not accept registration of any name that is similar to one currently on file, that would mislead the public, or that is similar or identical to the name of any producer whose license was suspended or revoked. . . .

**Bail bonds in force for 2001**

<b>Agent Population</b>	<b>Sample Size</b>	<b>Examined</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
38	5	5	3	60%

A review of the five (5) bail bonding agent's should that three (3) of the agent's failed to register assumed (trade) names used with the Division of Insurance. This review represented sixty-eight (68) of the ninety-four (94) bail bond files examined.

**Recommendation # 11:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-701, C.R.S. and Regulation 1-2-10. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures to monitor and ensure registration of agents assumed (trade) names as required by Colorado insurance law.

**Issue L: Failure of agents to maintain and provide records to examiner.**

Regulation 1-1-7 Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states, in part:

### III. RULE

#### B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are **readily available** (emphasis added) to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. **A policy record shall be maintained for each policy issued in the state** (emphasis added). Policy records shall be maintained for the current policy term, plus two years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained so as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

- a. The application for each policy, if any;
- b. Declaration pages, endorsements, riders, termination notices, Guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and
- c. Other information necessary for reconstruction of the rating and underwriting of the policy.

#### Bail bonds in force for 2001

Population	Sample Size	Examined	Number of Exceptions	Percentage to Sample
5,303	100	94	6	6%

Two (2) bail bonding agents of the five (5) bail bonding agents examined failed to provide the examiner with six (6) bail bond files as requested for review from the one hundred (100) sample size list provided. This appears to be a violation of Colorado insurance law.

**Recommendation # 12:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to record availability to the examiner to ensure compliance with the Colorado insurance law.

**Summary of Issues and Recommendations**

<b>ISSUES</b>	<b>Rec. No.</b>	<b>Page No.</b>
Issue A: Failure to adequately monitor producers' activities.	1	18
Issue B: Failure to accurately report premium to the Division of Insurance and pay appropriate taxes due.	2	20
Issue C: Failure to comply with agent reporting requirements to the Division of Insurance.	3	23
Issue D: Failure of agents to provide clients' payment schedules and/or payment receipts.	4	24
Issue E: Failure of agents to report proper premium to the Company.	5	26
Issue F: Failure of agent and principal to sign the bonding agreement as required.	6	27
Issue G: Failure of agents to provide a list of collateral to the Company.	7	28
Issue H: Failure of agents to provide property owner full release of lien.	8	30
Issue I: Failure of agent to provide property owner with a written disclosure of lien against real property.	9	31
Issue J: Failure to display the required fraud statement on all bail bond applications.	10	32
Issue K: Failure to register assumed (trade) name with the Colorado Division of Insurance.	11	33
Issue L: Failure of agents to maintain and provide records to examiner.	12	35

John J. Postolowski, CIE, MA, FLMI, AIRC, ACS  
Chief Examiner, Market Conduct Section

Independent Market Conduct Examiners:

Herbert L. Davis, AIE

Frederick T. Verny Jr., AIE, FLMI

Gerald L. Linhart

Participated in this examination and in the preparation of this report